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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,229	11/09/2001	Robert M. Lauglin	4633.3816	9864

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EXAMINER	
LUDLOW, JAN M	
ART UNIT	**PAPER NUMBER**
1743	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/045,229	LAUGLIN, ROBERT M.	
	Examiner	Art Unit	
	Jan M. Ludlow	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,5,6,8-12,14 and 18-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,5,6,8-12,14 and 18-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Claims 3, 5, 6, 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, "said data transmission" lacks antecedence. In claims 5-6, "said means for informing" lacks antecedence. In claim 20, "said means..." lacks antecedence.

2. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The disclosure as filed does not teach that the server is maintained by qualified breathing air personnel.

3. The amendment filed November 12, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as explained above.

Applicant is required to cancel the new matter in the reply to this Office Action.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 3, 5, 9, 10-12, 14-16, 18, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Banet et al.

Banet teaches a method and apparatus for testing gases emitted by automobiles. A sensor (col 3, lines 8-12) is provided in a car manifold or tailpipe (instant means for collecting and temporarily storing a gas sample), coupled to a microprocessor and wireless transmitter (col. 2, lines 50-59) for transmitting data to a host computer, e.g., web server, where the data is compared to EPA or other standards and a pass or fail message is transmitted to the user by electronic text, data, or voice message or Internet posting (Col. 3, lines 28-34, Figures 1 and 7). With respect to the gas analyzer being "electrically coupled" to the server, the analyzer is coupled by a wireless transmitter

coupling as in the instant invention, see, e.g., instant claim 3. The coupled server and microprocessor constitute a network. Alternatively to the wireless coupling, a serial interface may be used (col. 3, line 3). Sensed analytes include hydrocarbons and oil is a hydrocarbon, thus it is the examiner's position that oil is tested for (col. 3, line 12).

4. Claims 6, 8, 10, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banet.

Banet fails to teach a printer or printing results or explicitly teach testing for oil.

It would have been obvious to provide a printer and print the results in order to provide and maintain a hard copy independent of possible data corruption in a computer system as was known in the art. With respect to the alternative rejection of claim 10, it would have been obvious to test for oil in order to determine if combusted or uncombusted oil is among the hydrocarbons emitted by an automobile because oil is a pollutant used in an automobile.

5. Claims **1,3,5,6,8-12,14 and 18-20 are** rejected under 35 U.S.C. 103(a) as being unpatentable over Sunshine in view of Banet.

Sunshine teaches method and apparatus for monitoring ambient air by sampling and analyzing using a field device, sending data to a central server, and sending data back to the field device via the internet using wired or wireless technologies ([0007], [0011], [0026], [0030], [0041]).

Sunshine fails to teach comparison of the data to a standard for certification.

Banet teaches monitoring a gas sample in the field, transmitting data to a server for comparison to standards of acceptable contamination, and certifying that the gas sample has less than the acceptable level of contamination.

It would have been obvious to provide a comparison to acceptable gas quality standards in the apparatus and method of Sunshine in order to certify the gas test quality results as taught by Banet, e.g., to warn of hazardous chemicals in the ambient air.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Applicant's arguments filed November 12, 2004 have been fully considered but they are not persuasive.

8. Applicant argues that the instant invention is directed to method and apparatus for evaluating breathing air, but the instant disclosure includes ambient air as an example of breathing air (p. 1, line 22), and exhaust is part of the ambient air. Further, with respect to the apparatus claims, it is unclear which features, if any, define over an exhaust analyzer as taught by Banet. Note, for example, that carbon dioxide and monoxide, hydrocarbons and water are tested for in both the instant invention (p. 10) and in emissions testing.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (571) 272-1260. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jan M. Ludlow
Primary Examiner
Art Unit 1743

Jml
March 6, 2005